U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, DC 20530*

April 1, 2002

William D. Barr, Ed.D.
Superintendent of Schools
Monterey County Office of Education
P.O. Box 80851
Salinas, California 93912-0851

Dear Dr. Barr:

This refers to the change in the method of electing school trustees from districts to at large for the Chualar Union Elementary School District in Monterey County, California, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our September 19, 2000, request for additional information on April 20, 2001, and January 31, 2002.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the district's previous submission, which instituted the districting system for the election of trustees. Based on our analysis of the information you have provided, on behalf of the Attorney General, I am compelled to object to the submitted change in the method of election.

According to the 2000 Census, the school district has a total population of 2,365, of whom 1,846 (78.1%) are Hispanic. Hispanic residents comprise 74.4 percent of the voting age population. Approximately 55 percent of the registered voters in the district are Spanish-surnamed individuals.

Prior to 1995, the school district elected its five-member board of trustees on an at-large basis. At that time, the majority-Hispanic board, enacted the method of election currently in effect. Hispanic voters under this system have the opportunity to elect candidates of choice in a three-person, multi-member election district, Trustee Area 3, which has a Hispanic population percentage of over 90 percent. The school district now proposes to reinstitute the at-large method of election. Our analysis persuades us that the school district has not established, as it must, that this change in the method of election is not being implemented for the purpose of effectuating a retrogression in minority voters' effective exercise of the electoral franchise and that it will not have such a proscribed effect.

We have examined the circumstances surrounding the initiation of the petition drive, which led to the referendum on the proposed change. The starting point of our analysis concerning whether the petition was motivated by an intent to retrogress is Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977). There, the Supreme Court identified the analytical structure for determining whether racially discriminatory intent exists. This approach requires an inquiry into: 1) the impact of the decision; 2) the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; 3) the sequence of events leading up to the decision; and 4) whether the challenged decision departs, either procedurally or substantively, from the normal practice, and contemporaneous statements and viewpoints held by the decision-makers. Id. at 266-268.

As we understand it, the actions of the trustees elected from Area 3, a majority-Hispanic district, regarding the tenure of the district's superintendent of schools provided the impetus for the petition drive. The cover letter, which accompanied the petition, made note of this activity and then attacked the credibility of the trustees from that district, citing the language skills of one trustee and making unfavorable references to the language preferences of another. The language and tone of the letter raises the implication that the petition drive and resulting change was motivated, at least in part, by a discriminatory animus. This conclusion is further supported by statements made by proponents of the petition during our investigation.

Moreover, the petition focused on the actions of the persons elected by the Hispanic community in Area 3. However, over 90 percent of the persons signing the petition did not reside in that district. Rather, they were residents of Area 1, virtually all of whom were not Spanish-surnamed persons.

There is also evidence that the change will, in fact, have a retrogressive effect. Under the at-large system in the past, Hispanic voters have had only mixed success, and have faced consistent efforts - sometimes successful - to recall the candidates they have elected. Since the implementation of district elections, Hispanic voters have been able to elect candidates of choice, who have not been subject to recall by non-Hispanic voters. It is also apparent that even though voter registration is majority Spanish surnamed, this majority is not large and other voters often have been able to defeat Hispanic candidates of choice in district-wide elections. Indeed, during the referendum election which took place under highly charged, racially polarized circumstances, the non-Hispanic proponents easily defeated the Hispanic opposition.

The school district has failed to establish that the reversion to an at-large method of election will offer the same ability to Hispanic voters to exercise the electoral franchise that they enjoy currently. A voting change has a discriminatory effect if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. Reno v. Bossier Parish School Board, 528 U.S. 320, 328 (2000); Beer v. United States, 425 U.S. 130, 140-42 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a

submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Chualar Union Elementary School District plans to take concerning this matter. If you have any questions, you should call Ms. Judith Reed (202-305-0164), an attorney in the Voting Section.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division